

Abdul Halim Vs. State of West Bengal

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Court : Kolkata

Decided On : Dec-02-1999

Reported in : (2000)1CALLT364(HC)

Judge : Sujit Barman Roy, J.

Acts : Criminal Proceduer Code, 1973 - Sections 437 and 482;;[Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 380 and 436

Appeal No. : Criminal Revisional Jurisdiction, C.R.R. No. 1361 of 1999

Appellant : Abdul Halim

Respondent : State of West Bengal

Advocate for Def. : Mr. Kazi Safiullah, P.P. and ;Mr. S. Mallick, Adv.

Advocate for Pet/Ap. : Mr. S.S. Roy, Adv.

Judgement :

S. Barman Roy, J.

1. By this application under section 482 Cr.PC, Petitioner has prayed for quashing the charge-sheet filed in connection with Salnthla P.S. Case No. 106/98 (Gr. Case No. 704/98 and warrant of arrest Issued by the S.D.J.M. Suri.

2. In this case Police filed charge-sheet against petitioner and many others under sections 148, 380, 436 and 149 IPC. In the charge-sheet petitioner was shown as an absconder. Learned S.D.J.M., took cognizance of the case on the basis of the said charge-sheet and Issued warrant of arrest against petitioner.

3. Now, in this application, petitioner has prayed for quashing the charge-sheet and warrant of arrest against petitioner.

4. I have perused the charge-sheet and it appears therefrom that it will not be proper to quash the cognizance.

5. However, as regards warrant of arrest, I have perused the case diary to find out whether petitioner was rightly shown as an absconder in the charge-sheet. If the petitioner really absconded, then hts prayer for quashing the warrant of arrest cannot be allowed. On the other hand if it is found that there was absolutely no jurisdiction for showing him an absconder in the charge-sheet, then it will not be proper to keep him in custody until trial is over and hence petition must be allowed in that case.

6. After perusing the case diary, I find that only once I.O. raided the Sainthia house of the petitioner and he was riot found available in that house. Subsequently, I.O. merely went through two villages for arresting the accused persons but petitioner could not be arrested. From these circumstances, it is not enough to hold that petitioner had absconded. Mere passing through two villages without visiting the house of the petitioner may not be enough to Jump to a conclusion that petitioner was absconding. That apart, it appears that though petitioner is permanent resident of Gopaljole under Sainthla P.S., in connection with his service under Eastern Railway he was. posted at Burdwan. Burdwan is situated at a distance of about 76 Kms. from his native village. He has been allotted a residential quarter at Burdwan by his employer. Therefore, in connection with his service he normally resides at his residential quarter at Burdwan and not in his residence of his native village at Gopaljole. There is nothing in the C.D. that the I.O. made any attempt to arrest the petitioner from his place of posting or his residential quarter at Burdwan. It is not the case of the prosecution that the petitioner had absconded from his place of posting at Burdwan.

7. In view of the aforesaid circumstances, I am constrained to hold that petitioner should not have been shown as an absconder in the charge-sheet. There is absolutely no Justification in the C.D. to show the petitioner as an absconder. Furthermore, petitioner being a Govt. employee it is very unlikely that petitioner will abscond.

8. None of the offences alleged against the petitioner is punishable with life imprisonment or death sentence.

9. Section 437 Cr.PC does not impose any restriction against granting of bail unless the alleged offences are punishable with life imprisonment or death sentence.

10. Petition is, therefore, partly allowed. Petitioner is directed to surrender before S.D.J.M. within two weeks from today and thereupon learned Magistrate shall release the petitioner on bail on such terms and conditions as he may think fit and proper. Warrant of arrest shall not be executed during this period of 15 days from today. If, however, petitioner does not surrender within the aforesaid period, warrant of arrest issued against him shall be executed as usual.

With aforesaid directions, this petition is disposed of.

Let a plain copy of this order duly counter signed by Assistant Registrar (Court) be given to learned counsel for the State of this court, as prayed for.

11. Petitioner disposed of